

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
)
v.) Criminal No. 06-77
)
TYRONE D. PRATT)

MEMORANDUM AND ORDER OF COURT

Presently before the court is a pro se motion for appointment of new counsel (Document No. 73) filed by Tyrone D. Pratt ("defendant"). For the following reasons, defendant's motion will be denied.

On February 22, 2006, a grand jury returned a one-count indictment against defendant charging him with possession of a firearm by a convicted felon on July 30, 2005, in violation of 18 U.S.C. §922(g)(1) and §924(e). On June 13, 2007, following a trial, a jury returned a verdict of guilty as to Count One of the Indictment. Sentencing was set for September 12, 2007.

On June 21, 2007, defendant filed a pro se motion to proceed pro se (Document No. 67). Defendant's retained counsel, Sally A. Frick, Esq., subsequently indicated to the court that defendant did not wish to pursue his motion to proceed pro se and that she would continue to represent defendant at sentencing. She also indicated to the court on several different occasions that

defendant would be filing a motion to withdraw the motion to proceed pro se. However, no such motion has been filed.

On September 4, 2007, defense counsel filed a motion to continue the sentencing hearing and requested additional time to file objections to the presentence report. The court granted the motion and the sentencing hearing was rescheduled for October 10, 2007. On October 4, 2007, defense counsel filed a second motion to continue the sentencing hearing, which the court also granted. Sentencing currently is scheduled for November 7, 2007.¹

On October 25, 2007, defendant filed the pending pro se motion for appointment of new counsel. In that motion, defendant alleges that "irreconcilable differences" exist between counsel and defendant and that communication between the two is "impossible". He also asserts that counsel has been ineffective throughout the course of her representation.

Upon due consideration, the court is not satisfied that the motion raises sufficient allegations of a conflict between defendant and counsel to justify the removal of a competent attorney at this late stage of the proceedings. Although defendant contends that counsel has been "ineffective" throughout her representation, defendant made no effort to sever ties in the

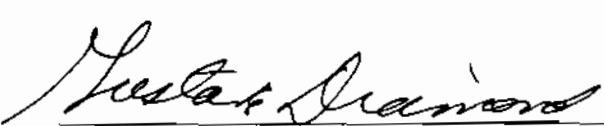
¹ The court also granted defense counsel's request for additional time to file objections to the presentence report, setting a deadline of October 26, 2007. As of the date of this Memorandum and Order, the court has received no objections from defense counsel.

three months she represented him prior to the jury trial in June. Moreover, defendant's only allegation of ineffectiveness post-trial is that counsel failed to file "certain motions" after the verdict. Defendant does not indicate what these "motions" were; therefore, the court cannot determine if counsel's decision not to file them even arguably could serve as a potential basis for a claim of ineffectiveness. Finally, and quite importantly, defense counsel has indicated that she does not agree that her relationship with her client has deteriorated to the point of being irreconcilable.

Defendant's sentencing already has been postponed twice. The court has reviewed the presentence investigation report and has filed this day its tentative findings and rulings and is satisfied that this will be a rather straight-forward sentencing upon defendant's conviction by a jury on a one-count indictment, with no complex or novel issues to be addressed. The court does not believe any purpose will be served by delaying sentence any further. Accordingly, for the foregoing reasons, defendant's pro se motion for appointment of counsel will be denied.

An appropriate order will follow.

Dated: October 31, 2007

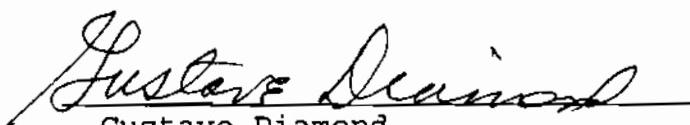

Gustave Diamond

United States District Judge

ORDER OF COURT

AND NOW, this 31st day of October, 2007, upon due consideration of defendant's pro se motion for appointment of new counsel (Document No. 73), IT IS ORDERED that defendant's motion be, and the same hereby is, **denied**; and,

IT FURTHER IS ORDERED that defendant's motion to proceed pro se (Document No. 67) be, and the same hereby is, **denied as moot**.



Gustave Diamond
United States District Judge

cc: Scott W. Brady
Assistant U.S. Attorney

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